

M O R R O W S O D A L I

OCTOBER 2020
PROXY UPDATE

VOTING GUIDELINES UPDATE

INSTITUTIONAL SHAREHOLDER SERVICES INC. (ISS) COMMENCES ITS ANNUAL BENCHMARK VOTING POLICY COMMENT PERIOD

Every fall ISS solicits feedback from global governance stakeholders, its clients and corporate issuers regarding its proposed voting policy changes for the upcoming proxy season.

The annual benchmark voting policy comment period is open until October 26, 2020, 5PM ET. The comments gathered by ISS will be considered as it finalizes its benchmark voting policies. The suggested policy updates and clarifications are a result of its recent global policy survey. The updated voting policies, to be finalized and publicly released in mid-November, are expected to go into effect for meetings on or after February 1, 2021. There are 17 proposed policy changes on a global scale and we have highlighted the most noteworthy below for your review.

SELECTED ISS PROPOSED POLICY CHANGES

- **Board Diversity, Race and Ethnicity (U.S.):** Beginning in 2022, at companies where there are no identified racial or ethnically-diverse board members, the proposed ISS U.S. policy will be to recommend voting against the chair of the nominating committee (or other relevant directors on a case-by-case basis). Mitigating factors will be considered and the proposed coverage universe is all companies in the Russell 3000 and S&P 1500 indexes.
- **Director Accountability (All global policies):** ISS policies globally will explicitly note that significant risk oversight failures related to environmental and social concerns may, on a case-by-case basis, trigger negative vote recommendations against board members. ISS believes this policy update will only impact a small number of directors each year. Of note, the newly worded policy specifically includes climate change as an example of a potential failure of risk oversight.
- **Shareholder Litigation Rights (U.S. and Canada):** ISS proposes modifications to the U.S. policy, and addition of language codifying the Canadian policy regarding management proposals to establish exclusive forums. The change in policy is due to the recent wave of shareholder litigation and is now broken down into two parts: a Federal Forum Selection provision and a State Law Exclusive Forum provision. The new policy states that ISS will vote in favor of federal forum selection provisions if the proposal specifies the district courts of the U.S. as the forum and not a specific federal district. For the state law provision, ISS will generally vote in favor of provisions that provide for Delaware to be the exclusive forum and other states would be voted on case-by-case. In addition, unilaterally adopted exclusive forum provisions will be viewed as a one-time failure under ISS' Unilateral Bylaw/Charter Amendment policy which may result in against votes on some or all of the directors.

The full length proposed guidelines can be found [here](#) and per the listed instructions, comments can be submitted via email for consideration. We will monitor ISS' response to the public comment period and issue an update as the 2021 voting guidelines are finalized.

STATE STREET GLOBAL ADVISORS – R-FACTOR RATING

In State Street Global's (SSgA) recently issued quarterly stewardship report their team disclosed engagement activities resulting from companies having a lagging R-Factor score. The R-Factor is SSgA's internal proprietary scoring system which measures the performance of a company's business operations and governance as it relates to financially material and industry-specific ESG risk factors as defined by the Sustainability Accounting Standards Board (SASB). Beginning with the 2020 proxy season, SSgA started taking action against board members at companies in the S&P 500 that were laggards based on their R-Factor scores and were unable to articulate a plan to improve their score. If SSgA believes a lagging company is not committed to engaging with them or working to improve their score then SSgA may not support the board's independent leader.

During the 2020 proxy season SSgA requested engagements with 14 issuers where the R-Factor score was considered lagging and engaged with the companies that were willing to undertake that engagement. SSgA voted against directors at 9 of the 14 lagging companies, 5 of which were U.S. listed issuers and 4 were listed in the United Kingdom.

In 2022 SSgA will be shifting its focus to historical R-Factor data aiming to target companies that consistently perform poorly versus their peers and may take action in the form of against voting unless meaningful change is demonstrated.

Issuers can request their R-Factor score from SSgA by emailing: myfactorscore@SSgA.com and including the following information:

- Company's legal name
- Ticker
- ISIN
- Company's headquarter location
- Contact name
- Contact's Title at Company
- Contact email address (must be an official company email address)
- Contact phone#

SSgA notes that the R-Factor score will only be provided to employees affiliated with a company's investor relations, chief financial officer, ESG/sustainability or corporate secretary's offices. They ask that when making the request that you include an attestation in the e-mail stating that you are affiliated with one of these functions.

Please do not hesitate to reach out to discuss the potential impacts of these issues on your company.

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